

Remarks

In the Official Action of February 7, 2005, the Examiner indicated that all claims (1-44) were subject to restriction under 35 U.S.C. § 121. The Examiner restricted the claimed invention into Species I directed to Figs. 1-7, Species II directed to Figs. 8-13, Species III directed to Figs. 14-21, Species IV directed to Figs. 22-28, Species V directed to Figs. 29-35, Species VI directed to Figs. 41-42, Species VII directed to Figs. 43-44, and Species VIII directed to Fig. 45. The Examiner also indicated that no claims were generic.

Applicant respectfully traverses this species requirement. Contrary to the Examiner's assertions, at least claim 1 is generic all species. Additionally, Applicant submits that all of the pending claims 1-44 are readable on, among other species, the species shown in Figs. 36-40.

Furthermore, it is believed that the features shown in each of Species I-VIII are not materially different, so as to constitute distinct inventions, for examination purposes. As the Examiner must acknowledge, they all relate to a lancet device which include at least the features of claim 1. Therefore, the searches must be at least somewhat overlapping for the groups. Thus, no undue burden is placed on the Examiner when examining all of the claims together.

Finally, the election requirement set forth by the Examiner omits one of the two criteria for a proper election requirement now established by the U.S. Patent and Trademark Office policy. As set forth in M.P.E.P. § 803 "an appropriate explanation" must be set forth by the Examiner as to the existence of a "serious burden" if the restriction were not required. By virtue of the Examiner's requirement and because the claims of the

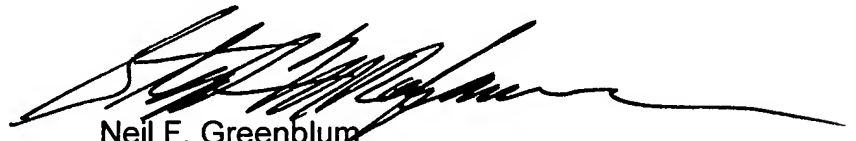
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various groups are so closely related, i.e., they have a technical relationship related to at least one common feature, it is submitted that there is no serious burden on the Examiner in examining all of the claims together. Furthermore, as noted above, the search for all of the claims includes at least some amount of overlap. Thus, no serious burden would come to bear on the Examiner.

For all these reasons, and consistent with the office policy as set forth in M.P.E.P. §§ 803, Applicant respectfully requests that the Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the election requirement in the present application. Accordingly, the Examiner's restriction requirement is believed to be improper and has been traversed for the reasons set forth above.

Nevertheless, in order to be fully responsive, Applicant has elected with traverse the invention defined by the Examiner as the Species shown in Figs. 36-40, directed to all of claims 1-44 in order to be fully responsive and in the event that the Examiner chooses not to reconsider and withdraw the restriction requirement.

Respectfully submitted,
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